

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHERWIN TERRELL SHELTON,

Defendant-Appellant.

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UNPUBLISHED  
February 14, 2003

No. 235652  
Oakland Circuit Court  
LC No. 01-177484-FC

Before: O’Connell, P.J., and Fitzgerald and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of one count of assault with intent to commit murder, MCL 750.83, one count of felon in possession of a firearm, MCL 750.224f, one count of carrying a concealed weapon, MCL 750.227, and two counts of possession of a firearm during the commission of a felony, MCL 750.227b, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Complainant testified that defendant, with whom he had spoken about the possibility that they were dating the same woman, came to his home, walked to within five feet of him, made a threatening remark, pointed a gun at him, and fired one shot. The shot entered complainant’s right front pants pocket and struck his pager, but did not enter his body. Complainant stated that defendant attempted unsuccessfully to fire a second shot. No other witness testified that defendant shot complainant; however, other witnesses testified that they saw defendant walking away from complainant’s home at the time of the incident. The police found defendant at his home hiding in a closet. A woman who described herself as complainant’s girlfriend testified that defendant telephoned her, told her that he had shot her boyfriend, and stated that she would be his next target. Complainant stated that he was no longer dating the woman.

The jury found defendant guilty as charged. The trial court sentenced defendant as a fourth habitual offender to concurrent terms of twenty to forty years in prison for assault with intent to commit murder, five to fifteen years’ for felon in possession of a firearm, five to fifteen years’ for the carrying a concealed weapon, and to consecutive two-year terms for the convictions of felony-firearm. The minimum term of twenty years’ for assault with intent to commit murder was within the applicable statutory sentencing guidelines.

In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the

elements of the offense were proven beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). A trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

The elements of assault with intent to commit murder are: (1) an assault; (2) with an actual intent to kill; (3) which, if successful, would make the killing murder. The intent to kill can be proven by minimal circumstantial evidence. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

Defendant argues that insufficient evidence was produced to support his conviction of assault with intent to commit murder<sup>1</sup> because the evidence did not establish that he had the requisite intent to kill. We disagree and affirm. Complainant testified that defendant stood within five feet of him, pointed a gun at him and fired a shot, and attempted unsuccessfully to fire a second shot. The jury was entitled to accept complainant's testimony, notwithstanding the fact that some portions thereof were contradicted by other testimony. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). The bullet did not enter complainant's body only because it struck his pager. The facts that the bullet struck the pager and that the gun would not fire a second time do not negate defendant's intent. Defendant pointed the gun at complainant's midsection. Evidence that a defendant deliberately fired a shot at a vital area of another person's body supports an inference that the defendant had the requisite intent to kill. *People v Drayton*, 168 Mich App 174, 177-178; 423 NW2d 606 (1988). The evidence, viewed in a light most favorable to the prosecution, supported defendant's conviction. *Wolfe, supra*.

Defendant argues that he is entitled to resentencing on his conviction of assault with intent to commit murder because the minimum term of twenty years' is disproportionate to his circumstances and those of the offense. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). We disagree and affirm defendant's sentence. Defendant's minimum term was within the guidelines. We cannot consider a challenge to a sentence based solely on proportionality if the sentence was within the guidelines. MCL 769.34(10); *People v Leversee*, 243 Mich App 337, 348; 622 NW2d 325 (2000).

Affirmed.

/s/ Peter D. O'Connell  
/s/ E. Thomas Fitzgerald  
/s/ Christopher M. Murray

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<sup>1</sup> Defendant does not challenge the sufficiency of the evidence that resulted in his other convictions.